

Exhibit 9

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April 21, 2020

VIA EMAIL TRANSMISSION

The Honorable Bryan Biedscheid
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Re: *City of Santa Fe v. Cephalon Inc.*, No. D-101-CV-01809 (1st Jud. Dist. Ct.).

Dear Judge Biedscheid,

The City of Santa Fe, due to unusual circumstances beyond the City's control, respectfully asks that this Court contact the United States District Court Judge for the *In re Opiate* Multidistrict Litigation, and request that he remand the City of Santa Fe's case to this Court. Contact information is:

Judge Dan Aaron Polster
Carl B. Stokes United States Court House
801 West Superior Avenue, Courtroom 18B
Cleveland, Ohio 44113-1837

Examples of other letters that state trial court judges, as the only judges with subject matter jurisdiction, have written to Judge Polster are included as the attachments to this letter.¹

¹ See **Exhibit 1**, Letter from Judge Barry C. Dozor, 32nd Jud. Dist., Pa. to Judge Dan Aaron Polster (June 19, 2019); **Exhibit 2**, Letter from Judge Rex Burlison, 22nd Jud. Cir., Mo. to Judge Dan Aaron Polster (July 10, 2019). Defendants consented to remand of the Pennsylvania case. Notice of Consent to Remand, *Delaware County, Pa. v. Purdue Pharma L.P., et al.*, No. 1:19-op-45285 [Doc. 60] (N.D. Ohio July 1, 2019).

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I. Background: The City filed suit to abate the opioid epidemic.

The City of Santa Fe initiated legal action in this Court to protect the City and its citizens from a man-made epidemic – the scourge of debilitating addiction, overdoses, and deaths caused by prescription opioids.² Unlike other epidemics, this crisis began with a corporate business plan. As pled in the City’s complaint filed in this Court, the major corporations that profited from drug sales had a duty to guard against diversion of highly addictive drugs into illicit channels, but for profit, unleashed a flood of these drugs into Santa Fe. The City suffers from a high intensity of drug trafficking.³ The City initiated legal action in this Court in order to protect its citizens and abate the scourge of opioid addiction.

II. The City’s action to abate an epidemic and protect its citizens has been unnecessarily stalled for an indeterminate time by a disingenuous removal scheme.

Instead of answering the claims in a tribunal with subject matter jurisdiction, Defendants removed the case as a ploy to secure a cross-country transfer to an MDL court that will refuse to allow the City to even file a motion.⁴ Defendants’ removal theory, which has been rejected by

² See, generally, **Exhibit 3**, 1st Am. Complaint, *City of Santa Fe v. Cephalon, Inc., et al.*, No. D-101-CV-2019-01809 (1st Jud. Dist. Ct. N.M. Sept. 18, 2019).

³ **Exhibit 3**, Complaint, p. 80 ¶ 233.

⁴ See **Exhibit 4**, Civil Docket Case # 1:19-cv-01105-KG-JHR; *accord* Order Regarding Remands, *In re National Prescription Opiate Litigation*, MDL 2804 (N.D. Ohio Feb. 16, 2018) (entering moratorium on motions to remand); Case Management Order No. 1, *In re National Prescription Opiate Litigation*, MDL 2804 (N.D. Ohio April 11, 2018), at ¶6.g (“No party may file any motion not expressly authorized by this Order absent further Order of this Court or express agreement of the parties.”); see also *Cty. of Anderson v. Rite Aid of S.C., Inc.*, No. 8:18-CV-1947-BHH, 2018 WL 8800188, at *2 (D.S.C. Aug. 20, 2018) (“The MDL Court has issued a moratorium on all

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courts nationwide, consists of the remarkable claim that the City could not file a single lawsuit to abate the same public nuisance, but rather had to sue the Defendants that caused the opioid crisis in two different lawsuits. No apposite authority supports Defendants' removal theory.

III. The Endo Defendants, with the tacit acquiescence of the other corporate Defendants, explained that State Court Judges contacting Judge Polster was the vehicle to achieve remand to State Court.

In this case, the federal Judge stayed the City of Santa Fe's remand motion so that the case would be transferred to the federal MDL pending in Judge Polster's court.⁵ Before the stay, the federal Judge in another governmental entity case filed in state court, brought by the City of

substantive filings, including motions to remand, and has indicated that it is not going to rule on any pending motions to remand at the present time.”).

⁵ **Exhibit 4**, Docket Entry 30.

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Albuquerque as plaintiff, granted that City a hearing.⁶ The same corporate Defendants in the City of Santa Fe's case were represented by counsel at that hearing,⁷ and were invited to participate.⁸

⁶ **Exhibit 5**, Motions Hr'g Tr., *City of Albuquerque v. Teva Pharmaceuticals USA, Inc., et al.*, No. 1:19-CIV-01168-JB/JHR (D. N.M. Jan. 24, 2020) ("Hr'g Tr."). The essential point of the hearing was for the Judge to announce that he would take no action and allow the case to be transferred.

⁷ Hr'g Tr. 1:15-16 and 3:21-25 (Eric. M. Sommer appearing for Teva Pharmaceuticas USA, Inc. and Cephalon); 1:16-19, 4:3-9 and 5:21-24 (Benjamin W. Allison and Sina Ria appearing for Johnson & Johnson, Janssen Pharmaceuticals, Inc., and Ortho-McNeil-Janssen Pharmaceuticals, Inc.), 1:19-21 and 4:15-22 (Eliseo Puig and John B. Pound for Endo Health Solutions, Inc. and Endo Pharmaceuticals, Inc.), 1:22-23 and 5:8-11 (Abigail Yates for Cardinal Health, Inc.), 1:23-25 and 5:13-16 (Meghan Dimon Stanford for Mallinckrodt, LLC, Mallinckrodt PLC, SPEGCX, LLC, and Mallinckrodt Brand Pharmaceuticals, Inc.), 2:1-2 and 6:6-8 (Larry D. Maldegen for McKesson Corp.), 2:2-3 and 6:11-13 (Douglas A. Baker for AmerisourceBergen Drug Corp.), 2:4-5 and 6:16-17 (Mark T. Baker for Walgreens Boots Alliance, Inc.), 2:5-6 and 6:20-22 (Brandon Myers for Wal-Mart Stores, Inc.), 2:7-9 and 6:25-7:8 (Sean Olivas, Michael Cardel, and Conor O'Croinin for CVS Health).

Two Defendants in Santa Fe's case, Defendant John Bray-Morris, M.D. and Defendant Nicole Renee Broderson, N.P., were not represented at the Albuquerque hearing.

⁸ Specifically, United States District Court Judge James O. Browning stated:

THE COURT: . . . Any of the other defendants want to say anything? Let me ask the ones in the courtroom first. Any of the individual defendants? You enjoy being sued by the City of Albuquerque? Anybody want to speak?

How about on the phone? Anybody want to speak on the defendants' side on the phone?

All Right.

Hr'g Tr., 86:6-13.

Later in the hearing, the court again asked, "[a]ny other defendant want to speak [?]" *Id.* at 110:20.

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At the Albuquerque hearing, Defendants' counsel⁹ stated that the City's argument that "the federal court won't rule" was "false and misleading."¹⁰ When asked by Judge Browning, "Has he granted some remand motions?," Defendants' counsel responded "yes" and explained that "two weeks ago [sic] Judge Polster ordered remand in two Missouri counties that were removed to federal court."¹¹ When Judge Browning asked Defendants' counsel to explain "the circumstances of those cases," "What caused him to send those back to state court?," Defendants' counsel explained that "the state court actually reached out and said, 'We'd really love it if you address these two remand motions. . . .'"¹² In the course of the discussion, Albuquerque's counsel expressed a belief that a letter had been written by the state court Judge to Judge Polster requesting that the cases be returned back to the state court.¹³ Counsel for the corporate Defendants in the City of Santa Fe's case appeared at the Albuquerque hearing, were invited to participate in the argument, and none of them contradicted or objected to the Endo Defendants' statements to the effect that cases could be remanded and that the procedure for remand was for the state court Judge to contact Judge Polster.

⁹ Counsel for the Endo Defendants.

¹⁰ Hr'g Tr., 81:2-3.

¹¹ *Id.* at 81:16-82:25.

¹² *Id.* at 83:3-14.

¹³ *Id.* at 99:14-15. The City's counsel expressed in the hearing that counsel was not sure what had happened in these other cases, did not believe this could be replicated for the City of Albuquerque, and essentially begged the federal judge to act before the transfer to the federal MDL. *Id.* at 100:14-15.

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IV. The City of Santa Fe respectfully asks that this Court write a letter to Judge Polster.

Judge Polster did in fact remand cases at the request of the State Court Judges who wrote him letters.¹⁴ While counsel for the City believes that the federal courts have a duty to remand now, without any letter,¹⁵ the City respectfully asks this Honorable Court to write a letter to Judge Polster.

Sincerely,

/s/ S. Ann Saucer

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¹⁴ Scheduling Order No. 2, *In re Nat'l Prescription Opiate Litig.*, MDL 2804 [Dkt. 1828] (N.D. Ohio July 11, 2019); Scheduling Order, *In re Nat'l Prescription Opiate Litig.*, MDL 2804 [Dkt. 1708] (N.D. Ohio June 20, 2019).

¹⁵ *See, e.g.*, 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case **shall** be remanded.”) (emphasis added). The City’s position has been that the proper procedure is for the federal court to remand the case in compliance with the statutory mandate. However, because Defendants have taken the position that a letter-writing campaign is the vehicle, the City is trying this.

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**Admitted in Federal Court*

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Enclosures:

Exhibit 1, Letter from Judge Barry C. Dozor, 32nd Jud. Dist., Pa. to Judge Dan Aaron Polster (June 19, 2019).

Exhibit 2, Letter from Judge Rex Burlison, 22nd Jud. Cir., Mo. to Judge Dan Aaron Polster (July 10, 2019).

Exhibit 3, 1st Am. Complaint, *City of Santa Fe v. Cephalon, Inc., et al.*, No. D-101-CV-2019-01809 (1st Jud. Dist. Ct. N.M. Sept. 18, 2019).

Exhibit 4, Civil Docket Case # 1:19-cv-01105-KG-JHR.

Exhibit 5, Motions Hr'g Tr., *City of Albuquerque v. Teva Pharmaceuticals USA, Inc., et al.* (D. N.M. Jan. 24, 2020).

CC: The Honorable Dan Aaron Polster, U.S.D.C. N.D. Ohio
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